

Letter of Findings Number: 02-20110210P
Tax Administration
For Tax Years 2008-09

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a partnership with operations in Indiana. The Indiana Department of Revenue ("Department") issued proposed assessments for penalties for failure to file composite partnership returns for the tax years 2008 and 2009. Taxpayer filed a protest of these penalties. Taxpayer called the Hearing Officer prior to the scheduled hearing and requested an expedited hearing and Letter of Findings. This Letter of Findings was written based on that telephone conversation and on the facts found in the protest file. Further facts will be presented as required.

I. Tax Administration–Penalty.

DISCUSSION

The Department issued proposed assessments for penalties for failure to file a composite partnership return for each tax year in question. Taxpayer protests the imposition of penalties and requests a waiver of those penalties. Taxpayer states that it collected and remitted all withholding taxes due from the partners in the partnership. Taxpayer also states that it did file partnership returns, but not composite partnership returns. Taxpayer believes that these factors establish grounds for waiver of the penalties in question.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

...

(j) If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by [IC 6-3-4-12\(h\)](#) or [IC 6-3-4-13\(j\)](#), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation.

....

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer failed to file composite partnership returns under [45 IAC 15-11-2\(b\)](#), and so was subject to penalties under IC § 6-8.1-10-2.1(a)(4). Taxpayer did remit all withholding taxes due for the two years

at issue. Taxpayer has also taken steps to resolve its composite partnership return filing issue. Taxpayer has affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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